IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1132 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVARSINH RAYSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1132 of 1999

MR JM BUDDHBHATTI for Petitioner No. 1

THROUGH JAIL for Petitioner No. 1

MR SS PATEL A.P.P. for Respondent

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 07/11/2003

JUDGEMENT

This is a Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, 1973 challenging the

judgement and conviction order recorded on 6.10.1999 by the learned Sessions Judge Kheda at Nadiad in Sessions Case No.44 of 1999 under which the learned Sessions Judge convicted the present appellant for offences punishable under Sections 376 and 506(2) of IPC and sentenced him to suffer RI for 7 years and pay fine of Rs.7000/-. In default of payment of fine, the appellant was directed to undergo further RI for two months for an offence punishable under Section 376 of IPC. No separate sentence has been inflicted for the offence punishable under Section 506(2) of IPC.

2. The appellant was prosecuted before the above Court on an allegation that on 24.10.1998 at about 11:00 PM, the appellant committed rape on Bhanuben, who happened to be his daughter-in-law, in his residence in village Hardari Vata in Aanklav Taluka of Kheda District against her will and without her consent and he also gave her threats with dire consequences and thereby committed said offences.

3. As per the case of the prosecution, Bhanuben-the prosecutrix had married the son of the appellant but the son of the appellant and the husband of the victim was not doing any job and therefore by and large the prosecutrix was staying at the residence of her father and not at the residence of her husband. On 24.10.1998 she had gone to the said village of the appellant. However, the husband of the victim was not present and the younger brother of the husband of the victim was present at the house. She prepared meals for all of them and after completing supper she was slipping in the room. That at about 11:00 PM the appellant entered the room and committed rape on her. She tried to resist and also tried to raise shouts but she was threatened. That thereafter she went to the house of her uncle and informed him about the incident in question. Thereafter both of them went to the village of the parents of the victim. The father had gone out and therefore, he was summoned and after consulting the father the victim filed FIR at Aanklav Police Station at 6:30 AM on the next morning.

4. Accordingly the investigating officer undertook the investigation. He arrested the appellant and had drawn the Panchnama in respect of the scene of the offence. Statements of witnesses were recorded by him and at the end of the investigation, chargesheet was filed. Since the offence was triable exclusively by the Court of Sessions, the case was committed to the Court of Sessions. The appellant was provided with copies of

police investigation papers. Charge was framed at Exhibit-4. It was read over and explained to the appellant. The appellant pleaded not guilty and therefore evidence was recorded. At the conclusion of the evidence, further statement of the appellant under Section 313 of the Said Code was recorded.

5. The appellant came out with a case that he had not committed any offence and false case was filed against him on account of enmity between the appellant and the uncle of the victim. In the alternative it has been pleaded that the physical relation was entered into on account of the consent of the victim and therefore no offence is made out.

6. After hearing the appellant, the learned Sessions Judge found the appellant guilty for the aforesaid offences and convicted him for the said offences. After hearing the appellant on quantum of punishment the aforesaid punishment was inflicted upon the appellant.

7. Feeling aggrieved by the said judgement and conviction order of the trial Court the appellant has preferred this appeal before this Court. It has been contended that the trial Court did not have sufficient material to convict the appellant. That the implied consent of the victim has not been properly appreciated by the trial Court. That on the whole, the judgement and conviction order are illegal and deserve to be set aside.

8. On receiving the appeal it was admitted, Mr. S.S.Patel learned APP has appeared on behalf of the State. I have heard learned advocate Mr. Budhbatti for the appellant and learned APP Mr. S.S.Patel for the State. Incidently, both of them have taken me through the evidence on record including the FIR and medical certificate.

9. The learned advocate for the appellant has taken me through the evidence of witnesses examined by the prosecution. On going through the evidence on record it is found that the prosecution has examined the following witnesses:

(i) Dr. Ramani Exhibit-7 who had examined the person of the victim as well as of the appellant on 25.10.1998 and 26.10.1998 respectively.

(ii) Victim Bhanuben Exhibit-13

(iii) Panch Rasikbhai Exhibit-41

(iv) Panchnama Exhibit-15
(v) PSI Mr. Barot Exhibit-17

10. So far as victim Bhanuben is concerned, her evidence has been recorded at Exhibit-13. There she has deposed that she had gone to the house of the appellant. That the appellant was serving elsewhere but because of Diwali days, the appellant was on leave and hence he was at his residence. That, she had enquired about her husband but the younger brother of the husband said that he had gone to the village but, the husband did not return till next morning. That she had prepared meals in the evening and then she had gone to slip in the room.

11. She has further deposed that the appellant was slipping outside the room. That at about 10:00 PM, the appellant entered the room, caught hold of her hands, threw her on the floor, removed her petticoat and thereafter, the appellant committed rape on her.

12. She has further stated that she tried to resist and also raised shouts but the appellant was successful in his act under the threats of a knife. That she was asked to keep silence. That, she was also told that in case she raised shouts, she would be killed. That thereafter, she went to the place of her uncle in the same village and had told him about the incident in question. Thereafter both of them had gone to village Aanklav. However, her parents had gone to her Aunt as she was sick and they were summoned to village Aanklav and on her informing about the incident, the father told her that she should file complaint before the Police Station. Therefore, she went to the Police Station at Aanklav and filed an FIR at 6:30 AM on the next morning. She identified the appellant as an accused person before the Court.

13. The witness was cross examined at length and the learned advocate for the appellant has taken me through the said cross examination also.

14. For the appreciation of the evidence of Bhanuben Exh.13, the learned advocate for the appellant has argued at length that the evidence of this prosecutrix is not acceptable in as much as her conduct at the relevant point of time is not found to be natural. It is argued by him that the brother of the victim was sleeping outside the room and the brother-in-law of the victim was sleeping little away from the room and therefore, in the aforesaid facts and circumstances, the appellant would not commit rape on his daughter-in-law in presence of the

two persons in the same house. He has also argued that as per the evidence of the petitioner she had raised shouts and yet nobody had intervened and the appellant was successful in committing the rape. This, according to his arguments, is totally improbable.

15. Here we can refer to the First Information Report filed by the victim at about 6.30 AM on the next morning at Aanklav Police Station. In the said F.I.R. she has clearly stated that she was frightened on account of a knife shown by the appellant and on account of the threats extended to her by the appellant and therefore she could not raise shout at all.

16. It is true that during the course of her evidence she has stated that she had raised shouts, but in view of the aforesaid statement of fact made by the victim in her F.I.R., it appears to me that the victim really did not raise shouts on account of fear of the appellant having knife with him and extending threat to her.

17. It is also required to be considered that the appellant was sleeping at night hours and it was around 10.00 PM when the incident took place. When she awoke, she found the appellant present in her room. Therefore, she was frightened. She would also have been taken by surprise and in view of the fact, it is natural that she did not and could not raise shouts Therefore, her conduct cannot be considered unnatural.

18. Mr.Buddhbhatti has also argued that the uncle of the victim was not having good relation with the appellant and therefore, at the instance of the uncle of the victim, the victim filed a false F.I.R. against the appellant. The nature of the alleged dispute between the two has not been brought on record. Moreover, we are here to consider the conduct of the victim, as well as the conduct of the appellant also. Soon after the occurrence of the incident, the appellant left the residence at late night hours and went away from it. If nothing happened, then it was absolutely unnecessary for him to leave his house at 11.00 PM. These were Diwali days and therefore, the appellant would not leave the house at 11.00 PM without even informing his son, who was sleeping in the same house.

19. Then, so far the victim is concerned, she also left the house with only blouse and Petticoat on her person and went to the house of her uncle. It is nobody's case that the victim had some another relation in the same village. Therefore, she had no alternative,

but to go to the said uncle. It is required to be considered that the F.I.R. was not filed by the victim on her mere consultation with or at the instance of the said uncle. Both of them went to the parental house of the victim at village Aanklav. At that time, the parents of the victim were not present there. The aunt of the victim was sick and therefore they had gone to see her health. The parents were summonsed at night hours and after their arrival, F.I.R. was filed at 06.30 AM.

20. So on one hand the incident took place around 10.00 PM at a distant place. Than the victim went to the uncle, than both of them went to village Aanklav. The parents were summonsed at night hours and thereafter, F.I.R. was filed at Aanklav Police Station at 06.30 AM, which shows that without any loss of time the victim had filed F.I.R., narrating the entire incident. It is required to be considered that the victim did not file F.I.R. on a simple suggestion or at the instance of the uncle. She had taken advise from her parents. In that view of the matter, her conduct cannot be considered to be unnatural.

21. After all, the victim was required to file F.I.R. against her father-in-law. By and large it seems that she was not on a very cordial terms with her husband also, since by and large, she was staying at her parental house. She has also deposed that after the aforesaid incident, the husband never approached her, even till her evidence was recorded. This shows her relationship with her husband. The victim was required to file F.I.R. against her father-in-law, in the above background also. Therefore, it would not be an unnatural conduct on the part of the victim to file F.I.R. after consultation with the parents. Therefore, it cannot be said that the victim filed a false F.I.R. against the appellant at the instance of her uncle. It is also required to be considered that the brother of the victim and the brother-in-law of the victim were also reportedly present in the house. However, when shouts were not raised and when it was around 11.00 PM when the incident took place, both might not have noticed the said event. Moreover, the brother-in-law of the victim was really the son of the appellant and therefore, he would not like to raise shouts in order to involve his own father in an offence like one, which has occurred in the present case.

22. In above view of the matter, I am of the view that the trial Court was justified in relying upon the sole testimony of the victim. The law does not require that the evidence of the victim should always be

corroborated. The sole testimony of the victim can be relied upon for the purpose of convicting an accused person, if the evidence is found to be reliable. The trial Court has found the evidence of the victim to be reliable and on reappreciation of the evidence, I find that the trial Court was not wrong in relying upon the evidence of the victim.

23. It is further required to be considered that the victim was taken to the Medical Officer and there she has given the history that rape was committed on her at about 10.00 PM on 24th October 1998, without her consent. This shows that as soon as she was taken to the Medical Officer, she disclosed that rape was committed on her without her consent. In above view of the matter, it cannot be said that the conduct of the victim was doubtful in filing a false F.I.R. against the appellant. It is more so, when she has consistently and repeatedly stated the same history before Medical Officer also.

24. It seems that even the Medical Officer has also supported the evidence of the victim. It is true that no injury was found on the person of the victim. However, looking to the aforesaid circumstances and looking to the fact that the rape was committed by the father-in-law on the daughter-in-law at late night, at the point of knife, there was hardly any scope for stiff resistance and therefore, in absence of such a closed and stiff resistance, injury could not have been there on the person of the victim or on the person of the appellant and therefore, absence of the injuries on the person of the victim or on the person of the appellant cannot help the present appellant.

25. It has then been argued in the alternative that the appellant may be treated to have had physical relations with the victim with her consent. There is hardly any possibility for accepting the said alternative defence. The first obstacle in the way of the appellant is that the victim was not on a very cordial relationship with the husband and by and large, she was staying at the residence of her parents. At the same time, the appellant was serving at Ahmedabad. Therefore, the victim did not have a closed relationship with the appellant and therefore, the victim would not have been readily agreeable to consent to have physical relationship with her own father-in-law. Moreover, she immediately rushed to the place of her uncle. Then both of them went to her parental house at village Aanklav. The parents were away. They were summonsed at late night and after conveying the fact to the parents, the victim

filed F.I.R. at 06.30 AM at village Aanklav, before Aanklav Police Station. Looking to the said conduct on the part of the victim, it cannot be said that the rape was committed by the appellant with the consent of the victim.

26. Again, Dr.Ramani Exh.7 has deposed before the trial Court that as per the history given by the victim, rape was committed on her at 10.00 PM on 24th October 1998 without her consent. The said fact gathers support from the medical case papers at Exh.9 and medical certificate at Exh.10.

27. It is true that the doctor has also recorded similar statement of history given by the appellant, in his certificate, Exh.12, wherein the appellant has stated that rape was committed with her consent.

28. On one hand the appellant was interested in so saying before the Medical Officer, on the other hand we find that to some extent his statement supports case of prosecution that rape was committed on the victim by the appellant. Even if we take it that the statement of the appellant before the doctor cannot be cut into two pieces and one of the two pieces cannot be used against the appellant, then also we can ignore the same and there also there is an oral testimony of the victim, supported by Medical Officers' evidence and further supported by the history of event given by her to the Medical Officer and the history of event given in her F.I.R. Even, her conduct as stated hereinabove, is very consistent to the guilt of the appellant. On the other hand, the appellant soon after the incident, at about 11.00 PM, left the house and also left alone the victim and went elsewhere. Had there been a case of consent, it was not necessary for him to leave the house and the victim.

29. The learned advocate for the appellant has also argued that the Muddamal knife said to have been shown by the appellant has not been recovered It is also argued by him that the small mattress, on which the appellant was sleeping was not sent for chemical analysis. Simply because the Investigating Officer did not cease a particular article as Muddamal article and if the evidence is otherwise reliable, then the said reliable evidence cannot be thrown away on the ground that some Muddamal article has not been ceased and that Muddamal mattress has not been sent for chemical analysis.

30. It has also been argued by the learned advocate for the appellant that when knife has not been recovered,

the offence punishable under Section 506 of the Indian Penal Code cannot be said to have been made out. Non-recovery of Muddamal article would not be fatal on the case of the prosecution in every case. After all this may be a knife, which may be ordinarily used in a kitchen also. It may have a little large size. The fact remains that at the time of commission of the offence, the appellant was holding a knife with a view to extend threats to the victim so that the victim may not raise shouts and the appellant could successfully commit the offence of rape without any obstacle or resistance. In that view of the matter, mere non-recovery of Muddamal weapon would not be treated to be fatal on the case of the prosecution and on that count, the appellant cannot be acquitted of an offence punishable under Section 506 of the Indian Penal Code. Even for the purpose of committing that offence, it would not be a matter of requirement that the accused should always possess a weapon while extending such a threat to his daughter-in-law in his own house while committing an offence of rape.

31. It has further been argued that the uncle of the victim has not been examined as a witness. The uncle was not a witness to the event. The event was conveyed to him by the victim. Therefore, by and large, it was required to be considered by the trial Court as to whether or not the Court could depend upon the sole oral testimony of the victim. When the victim's sole evidence on oath before the trial Court was found to be acceptable, non-examination of uncle or parents would not be fatal on the case of the prosecution. Even on reappreciation, I also find that her evidence inspires confidence. It is found to be trustworthy, reliable and acceptable to this Court also.

32. On the whole, I find that there was satisfactory and sufficient evidence on the record of the trial Court in order to hold the present appellant guilty for the offences punishable under Sections 376 and 506(2) of the Indian Penal Code. The trial Court was justified in relying upon the evidence of the victim, which inspires confidence. Her conduct is very consistent with the guilt of the appellant. The F.I.R. has been filed almost without any loss of time. Here we have to consider the event between the commission of the offence and filing of F.I.R. These facts have been narrated hereinabove. In view of the above stated facts, it cannot be said that F.I.R. was filed late.

33. In the facts and circumstances, when the evidence

of the victim inspires confidence, the trial Court was justified in depending upon the same and therefore, the judgment and conviction order of the trial Court cannot be treated to be illegal, improper or unjust. This shows that there is no merit in the present appeal and therefore it deserves to be dismissed.

34. On the quantum of punishment, the learned advocate for the appellant has alternatively argued that looking to the age of the appellant, the punishment of R.I. for 7 years is on a higher side. It is required to be considered here that the victim was, by and large, not staying at the residence of her husband. She had come there to stay for a short while. These were Diwali days. The husband was not present at the house. The rape was committed on her by the appellant, who happened to be her father-in-law. A father-in-law is as good as a father for a daughter-in-law and the victim was as good as a daughter for the appellant. The victim would never have thought or imagined that the appellant would misuse the position of her loneliness in the absence of her husband and commit rape on her. She would have treated the appellant to be her father, otherwise, she would not have opted to stay and sleep there in absence of her hunsabd. Considering the aforesaid facts and circumstances on record, I am of the view that R.I. for 7 years cannot be treated to be on higher side. Therefore, even on the point of quantum of punishment, this is not a fit case, wherein this Court should interfere with the discretionary power and jurisdiction of the trial Court of selecting the quantum of punishment.

35. For the foregoing reasons, I find that there is absolutely no merit in the present appeal and therefore, the present appeal is ordered to be dismissed. The judgments and orders of the trial Court are confirmed.

(D.P.Buch, J)

/MPS/